

*Opinion No. 1098*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

FILED

LINDA POLLIN MEMORIAL  
HOUSING CORPORATION,

Petitioner

v.

DISTRICT OF COLUMBIA,

Respondent

JUN 9 1972

Superior Court of the  
District of Columbia  
Tax Division

Docket Nos. 2090  
2119

O P I N I O N

The Petitioner, Linda Pollin Memorial Housing Corporation, appeals from assessments of real estate taxes against it for the fiscal years 1970 (Docket No. 2090) and 1971 (Docket No. 2119). These cases were consolidated for appeal since they involved successive fiscal years, and the same questions of law and fact, i.e., whether certain real property owned by the Petitioner is exempt from real estate property taxes in view of D. C. Code 1967, §§47-801a(h) and (r).

Petitioner appeals from the assessment pursuant to D. C. Code 1967, §§47-801e and 47-2403.<sup>1/</sup> This Court has jurisdiction to hear these appeals pursuant to D. C. Code 1967, §§47-801e and 47-2403 (Supp. IV, 1971).

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<sup>1/</sup> These sections have been amended by the D. C. Court Reform and Criminal Procedure Act of 1970 (P.L. 91-358, 74 Stat. 473) which gives jurisdiction to hear such appeals to the Superior Court of the District of Columbia. See D. C. Code 1967, §§47-801e and 47-2403 (Supp. IV, 1971). See also D. C. Code 1967, §47-2402, which designated the Board of Tax Appeals to be the District of Columbia Tax Court. Section 47-2402 was also amended by P.L. 91-358.

exclusively used in the work of associations and corporations exclusively  
for the moral and mental improvement of men, women and children. . . ."<sup>34/</sup>

This Court agrees that the presentation of the dramatic arts may be morally and educationally uplifting, but such an achievement under the District of Columbia statute in the instant case would fall short of qualification. The Court simply cannot find a "generally recognized relationship of teacher and student" existing between petitioner's paying audience and its actors on the stage.

The petitioner has further contended that the play productions are actually a continuation of its students' education and are "the culmination of all of the work and effort comprising the educational program.", citing Little Theatre of Watertown, Inc. v. Hoyt, supra. Yet a close reading of the case reveals that the Little Theatre utilized the talents of its members in preparing for the play productions and also in the giving of the actual performance, and did not rely as does petitioner upon the use of professional actors. Even in granting the exemption to Arena Stage, the District of Columbia Corporation Counsel dealt with the situation where the theater, although relying on professional actors, had an agreement with the Actor's Equity Association which allowed students to participate in the stage productions. Here, petitioner is solely a professional theater with the use of its students on the stage minimal at most, and the Court therefore rejects the argument that the stage productions are a culmination of petitioner's educational activities.

The Court must finally determine the weight in actuality that the petitioner has placed upon its school as compared to its professional theater. As previously postulated, the petitioner's operations must be primarily that of a school if it is to qualify for a tax exemption under Section 47-801a(j). Although mindful of the great emphasis petitioner places upon the 70% building time use spent on its school activities, the Court in balancing all of the factors concludes that the cumulative effect of the petitioner's expenditures, sources of income, and professional actor hiring practices far outweigh the

The parties have entered into a lengthy Stipulation of Facts, and have also stipulated into evidence numerous exhibits. Based upon that stipulation, the Court makes the following:

#### FINDINGS OF FACT

1. Petitioner is a nonstock, nonmembership, nonprofit corporation organized and existing since May 12, 1965, under the District of Columbia Non-Profit Corporation Act, (Title 29, Chapter 10, District of Columbia Code).

2. The purpose for Petitioner's existence is as stated in the preamble of its Articles of Incorporation, namely:

[T]o provide housing for the use and occupancy by families displaced from urban renewal areas or by governmental action and families of low or moderate income where no adequate housing exists for such groups . . . .

3. The Seventh Article of Petitioner's Articles of Incorporation provides:

No part of the net earnings of the corporation shall be distributed to, or inure to the benefit of any contributor, private individual or the officers or directors of the corporation.

No part of Petitioner's net earnings, nor its holdings, has been used in any manner, directly or indirectly, to benefit any person or entity, excepting the residents and occupants of the property owned by Petitioner.

4. The Eighth Article of Petitioner's Articles of Incorporation provides:

In the event of the dissolution, winding up, or other liquidation of the assets of the corporation, the rental housing

project shall be conveyed only to such non-profit and charitable corporation or institution as may be designated by the corporation, to be used for purposes comparable to those of this corporation, and shall not be conveyed to any private individual, firm, or organization, or corporation organized for profit, or to any member, sponsor, contributor, private individual, trustee, or the officers of the corporation.

5. In 1965, pursuant to its purposes, Petitioner acquired, certain land (hereinafter the project property) in the District of Columbia located at 828 Bellevue Street, S. E., namely Lots 125, 810 and 811, Square 6159. Thereafter, on June 15, 1965, Petitioner entered into a "Regulatory Agreement For Non-Profit and Public Mortgagors" with the Federal Housing Administration (FHA) under the provisions of Section 221(d)(3) of the National Housing Act, as amended (12 U.S.C. 1715-1). By virtue of this agreement Petitioner obtained insurance by FHA of such loans as Petitioner secured to construct improvements on the project property.

6. In May, 1966, Petitioner completed construction of the proposed improvements. The improvements consist of 20 garden-type apartment buildings containing a total of 332 units, a community building, a swimming and a toddling pool and a playground. The occupants of the apartment units are either families displaced because of urban renewal or economically in need of low or moderate income housing accommodations.

7. On June 28, 1965, the District of Columbia issued to Petitioner, pursuant to the Income and Franchise Tax Act of 1945, as amended (47 District of Columbia Code

2605 & 2706), a Certificate of Exemption exempting Petitioner from the payment of sales and use taxes. The exemption remains in effect.

8. On July 6, 1966, Petitioner's application to the District of Columbia for a declaration of its exempt status as a "semi-public institution," under the Income and Franchise Tax Act of 1945, (47 District of Columbia Code 1554(d)), was granted and remains in effect.

9. A "semi-public institution" is defined by the Act as "any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual." (47 D. C. Code 2601(18)).

10. On March 17, 1969, Petitioner submitted to the District of Columbia (Finance Office) its written request that Petitioner's property, as improved, be recognized as exempt from real property taxation pursuant to 47 District of Columbia Code 801a(h) & (r).

11. On or about September 1, 1969, the District of Columbia, having failed to administratively rule on Petitioner's written request for a ruling that the project property was exempt from real property taxation, because of the provisions of 47 District of Columbia Code 801a(h) & (r), notified Petitioner of the assessment and taxes due with respect to said real property for fiscal year 1970, namely as to:

(a) Square 6159, Lot 125

Assessed Valuation: \$1,913,095.00

Total Tax: 59,305.94

(b) Square 6159, Lot 810

Assessed Valuation: 1,211.00

Total Tax: 37.54

(c) Square 6159, Lot 811

Assessed Valuation: 1,211.00

Total Tax: 37.54

Total Tax: 59,381.02

12. On or about June 1, 1970, the District of Columbia sent to Petitioner, because the immediately above referred to taxes had not been paid, a notice of delinquent real estate tax purporting to penalize Petitioner in the following amounts:

(a) Square 6159, Lot 125	\$3,558.36
(b) Square 6159, Lot 810	2.25
(c) Square 6159, Lot 811	<u>2.25</u>
Total	\$3,561.86

13. On or about September 1, 1970, the District of Columbia, having failed to administratively rule on Petitioner's written request for a ruling that the project property was exempt from real property taxation, because of the provisions of 47 District of Columbia Code 801a(h) & (r), notified Petitioner of the assessment and taxes due with respect to said real property for fiscal year 1970, namely as to:

(a) Square 6159, Lot 125

Assessed Valuation: \$1,913,095.00

Total Tax: 59,305.94

(b) Square 6159, Lot 810

Assessed Valuation: 1,211.00

Total Tax: 37.54

(c) Square 6159, Lot 811

Assessed Valuation: 1,211.00

Total Tax: 37.54

Total Tax 59,381.02

14. On or about November 1, 1970, the District of Columbia sent to Petitioner the notices (attached as Exhibit 9-I 1, 2 & 3) purporting to penalize Petitioner, because the immediately above-referred to taxes for fiscal year 1971 had not been paid, in the following amounts:

(a) Square 6159, Lot 125	\$6,523.65
(b) Square 6159, Lot 810	4.13
(c) Square 6159, Lot 811	<u>4.13</u>

Total \$6,531.91

15. The above-mentioned written request for a ruling that the project property was exempt from real property taxation was filed with the District of Columbia on March 17, 1969. Petitioner, on June 30, 1970, again requested such a ruling for fiscal year 1971.

16. Included in Petitioner's request for the ruling of exemption from real property taxation was a schedule of the size and income of families occupying, as tenants, the subject improvements.

II

The Petitioner contends that the real estate in question is exempt under D. C. Code 1967, §47-801a(h).  
At the time the petitions were filed<sup>2/</sup>, §47-801a(h) provided:

The real property exempt from taxation in the District of Columbia shall be the following and none other:

\* \* \*

(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.

Thereafter, in the District of Columbia Revenue Act of 1970 (P.L. 91-650, 74 Stat. 1932), Congress amended §47-801a(h) to provide:

The real property exempt from taxation in the District of Columbia shall be the following and none other:

\* \* \*

(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia. For purposes of this paragraph, any building --

(1) which is financed in whole or in part with (A) a mortgage insured under section 221(d) (3), (h), or (i) of the National Housing Act (12 U.S.C. 1715l) and receiving the benefits of the interest rate provided for in the proviso in section 221(d)(5) of such Act or (B) a mortgage insured under section 237 of such Act (12 U.S.C. 1715z-2);

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<sup>2/</sup> Docket Nos. 2090 and 2119 were filed in December, 1969, and November 1970, respectively.

(2) with respect to which periodic assistance payments are made under section 235 of the National Housing Act (12 U.S.C. 1715z) or interest reduction payments are made under section 236 of such Act (12 U.S.C. 1715z-1);

(3) with respect to which rent supplement payments are made under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

(4) which is financed in whole or in part with a loan made under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(5) which contains dwelling units constituting low-rent housing in private accommodations within the meaning of section 23 of the United States Housing Act of 1937 (42 U.S.C. 1421b); or

(6) with respect to which there is an outstanding rehabilitation loan made under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b),

shall not, so long as the mortgage or loan involved remains outstanding or the assistance involved continues to be received, be considered a building used for purposes of public charity; except that this sentence will not apply to those organizations granted an exemption under this paragraph before January 5, 1971.

In March, 1971, the District of Columbia filed motions to dismiss the petitions on the grounds that the petitions failed to state a claim upon which relief could be granted. Specifically, the District argued that the Petitioner is not entitled to an exemption on the grounds that the real property and improvements are not used for public charitable purposes for the following reasons: Petitioner had (1) not been granted an exemption under §801a(h) before January 5, 1971; (2) is financed with a mortgage.

insured under §221(d)(3) of the National Housing Act, and (3) is receiving the benefits of the interest rate provided for in the proviso to §221(d)(5) of that Act. Thus, the District argues that the District of Columbia Revenue Act of 1970 precludes "this Court from granting Petitioner an exemption" from real estate taxes. (Emphasis the Court's.)



The argument advanced by the District of Columbia, in support of its motions to dismiss, is premised upon the erroneous assumption that this court and/or the District of Columbia have the authority to grant exemptions. In the District of Columbia, absent a specific congressional delegation of authority, only Congress can grant exemptions from the tax in question. Gibbons v. District of Columbia, 116 U.S. 404 (1886); District of Columbia v. National Park Assoc., \_\_\_ U.S. App. D.C. \_\_\_, 444 F. 2d 963 (1971); Washington Ethical Society v. District of Columbia, 101 U.S. App. D.C. 371, 249 F.2d 127 (1957). The District has cited no authority which would indicate that Congress has delegated the right to grant exemptions from real estate taxes.

Congress has utilized two methods for granting exemptions. In some cases Congress has specifically exempted property owned by named organizations from real estate and other taxes. Such special exemptions are found in D. C. Code 1967, §§47-805 - 47-836. As recently as 1971, Congress granted special exemptions to The National Society of the Colonial Dames of America

and the American Institute of Architects Foundation (Octagon House). See D. C. Code 1967, §§47-801a-2 and 47-837 (Supp. IV 1971), respectively.

In other cases, Congress has granted general exemptions, exempting organizations and property falling into certain general classifications. Such exemptions can be found in §47-801a(a) - (r), and include property belonging to certain hospitals (§47-801a(i)), schools (§47-801a(j)), cemeteries (§47-801a(l)), and churches (§47-801a(m)) to cite only a few. The exemptions involved in the instant case falls within the general category which includes buildings used for purposes of public charity principally in the District of Columbia (§47-801a(h)).

Congress has not by granting general exemptions waived or delegated its authority to grant exemptions on real estate to the District of Columbia but merely has avoided the necessity for naming every public charity, church, school, hospital, cemetery or other organization which it feels is entitled to exempt status by setting forth general categories. For example, in the case of exemptions granted to churches there is no question that Congress intended to exempt all churches falling within that classification, and thus neither the District of Columbia nor this court has the authority or option to refuse an exemption to such a church.

When an organization applies to the District of Columbia for an exemption under §§47-801a(a) - (r) it is not requesting the District to grant an exemption but is merely requesting that its exempt status be recognized.

Thus, in the case of a "church" applying for exempt status the District of Columbia is only called upon to determine whether that organization falls within the classification established by Congress. There may be a question concerning whether the organization is a church and whether the building and structure are reasonably necessary and usual in the performance of the activities of the church, however, once those issues are resolved in favor of the organization, the church is exempt by Act of Congress. In such cases the District of Columbia is called upon only to determine whether that organization is exempt, and is not being requested to grant an exemption.<sup>3/</sup>

### III

The Court finds as a fact that the petitioner is a nonprofit housing corporation, that it is not organized or operated for private gain, and that it operates exclusively within the District of Columbia. The only remaining question is whether the petitioner qualifies as a public charity under D.C. Code 1967, §47-801a(h).

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<sup>3/</sup> In determining whether an organization is exempt under a general exemption statute, the District is acting with respect to District of Columbia taxes as does the Internal Revenue Service with respect to federal taxes. For example, the Internal Revenue Service (actually the Department of the Treasury) may be called upon to determine whether a private school is entitled to certain exemptions as an organization operated for "educational purposes". In such matters the Treasury Department does not grant an exemption but only determines whether the organization is exempt by virtue of an Act of Congress. Green v. Connally, 330 F. Supp. 1150 (D.C. D.C. 1971), aff'd sub nom. Coit v. Green, 404 U.S. 997, 30 L.Ed. 2d 550 (1971).

In this jurisdiction it has been held that a home for aged ladies was a public charity even though some of the recipients were able to contribute something towards their support. Catholic Home for Aged Ladies v. District of Columbia, 82 U.S. App. D.C. 195, 161 F.2d 901 (1947).

In another case, the Court held that a settlement house which provided classes and social activities for adults and children and day care for children was nevertheless a public charity even though it charged a modest fee for its services based upon the individual's ability to pay. District of Columbia v. Friendship House Association, 91 U.S. App. D.C. 137, 138, 198 F.2d 530, 531 (1952).

There the Court said:

But as the Board (of Tax Appeals) said, 'it is not necessary, in order to qualify as a charity, that an organization confine its activities to the furnishing of the bare necessities of life, namely, food, shelter and clothing. An activity is equally a charity when, as in the case of the petitioner, it affords some of the amenities of a decent life to those who are unable to pay anything at all or the full price thereafter. . . .

In Washington Chapter of American Institute of Banking v. District of Columbia, 92 U.S. App. D.C. 139, 141, 203 F.2d 68, 70 (1953), the taxpayer, a banking institution, was held not to be exempt as an educational institution under D. C. Code 1967, §47-801a(j), since it was not performing a service "essentially public which the state is thereby at least partially, relieved pro tanto from the necessity of performing."

The modern definition of charity is no longer limited to the free care of the indigent and now includes the idea of charity as comprehending all humanitarian activities even though some of the recipients may be able to pay in part for the benefits they receive. See in this connection 37 ALR 3d, Charities - Tax Exemption, pp. 1196 - 1199.

Today, our urban communities, including the District of Columbia, are faced with the problems of high crime rates, inadequate housing and less than adequate schools. Much of the crime in the cities is conceived in the poor environment found in certain sections of the city and fed by despair brought on by the realization that there is little chance of escape until it breaks free and spreads throughout the entire community like an epidemic. In such cases, even the supposedly cherished dream of neighborhood schools becomes a nightmare since the prime quest of the residents of the neighborhood is to escape from the neighborhood itself.

Those who can afford it run from the spreading blight and either rebuild parts of the city for themselves or abscond from the city altogether. Where they rebuild in the name of urban renewal, less fortunate families are displaced and left to seek new housing often leading to a spread of blight from one area of the community to another. Some of those displaced families who can be classified as "poor" are fortunate to find "low income housing" provided by the community. It is the rare

community, however, that has sufficient housing to meet with the ever increasing demands placed upon it. In these situations the group which suffers the most from this urban upheaval are those families in the twilight zone of low to moderate income. Those families find in many cases that they earn too much to qualify for city supported housing and too little to afford more expensive private housing. The problem is made more difficult for those families because many private apartment houses will not accept children.

While the individual families are perhaps the primary victims of the lack of adequate housing, the community as a whole suffers. One need only to drive through the streets of this city to see row upon row of empty and decaying housing which is no longer on the market. The areas, where such housing is located, represent a danger to the health and safety of the neighborhood and leads to greater insecurity of the residents of the surrounding community. In addition, the tax base of the city is depressed.

Over the years Congress has recognized the problems of housing. In the Housing Act of 1954, C. 649, 68 Stat. 590, the Congress fully endorsed the statement of President Eisenhower in which he said (See S. Rep. No. 1472, 83 Cong., 2d Sess., p. 1):

The development of conditions under which every American family can obtain good housing is a major objective of national policy. It is important for two reasons. First, good housing in good neighborhoods is necessary for good

citizenship and good health among our people. Second, a high level of housing construction and vigorous community development are essential to the economic and social well-being of our country. It is, therefore, properly a concern of this Government to insure that opportunities are provided every American family to acquire a good home.

Other housing acts have stated a similar purpose.<sup>4/</sup>

The petitioner is a nonprofit housing organization which furnishes housing to families with low and moderate incomes. The petitioner gives priority to those families displaced by urban development as well as to those families who have children. While all families pay rent, it is obvious that they pay less rent than they would be required to pay if the same services were furnished by private housing.<sup>5/</sup>

The petitioner, by furnishing low and moderate income housing, has to some extent relieved the city from furnishing housing and contributed to the well being of the community. For all of the above reasons, those services furnished by the petitioner fall within the definition of "public charity" as that term is defined in D. C. Code 1967, §47-801a(h).

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<sup>4/</sup> Housing Amendments of 1955, C. 783, 69 Stat. 635; Housing Act of 1956, C. 1029, 70 Stat. 1091; Housing Act of 1959, P. L. 86-372, 73 Stat. 654; Housing Act of 1961, P.L. 87-70, 75 Stat. 149; Housing and Urban Development Act of 1965, P.L. 89-117, 79 Stat. 451; Housing and Urban Development Act of 1968, P.L. 90-448, 82 Stat. 477.

<sup>5/</sup> See Stipulation and exhibits attached thereto.

The District argues that the legislative history of the District of Columbia Revenue Act of 1970, hereinafter referred to as the Act, supports its contention that Congress never intended §47-801a(h) to apply to nonprofit housing corporations. The fact remains, however, that in the Act itself, Congress specifically recognized that some housing corporations might be exempt by providing in §202 of the Act that ". . . this sentence [the amendment to §47-801a(h)] will not apply to those organizations (nonprofit housing corporations) granted an exemption under this paragraph before the date of enactment of this sentence." (Matter in brackets the Court's.) In the face of such clear language it is not necessary for the Court to turn to the legislative history for an interpretation of the Act.<sup>6/</sup>

Assuming arguendo that the statute is unclear, the Court finds that the legislative history is not inconsistent with the holding that the petitioner is exempt from real estate taxes. The amendment to §47-801a(h) is retrospective as well as prospective. It is retrospective in that it applies to nonprofit housing corporations for the

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<sup>6/</sup> In considering the comments of the 1970 congressional committee concerning the meaning of §47-801a(h) which was enacted in 1942, this Court notes that the pronouncements by a subsequent Congress are not entitled to the same weight as those of the Congress which enacted the measure. Banco Nacional de Cuba v. Farr, 383 F.2d 166, 175 (C.A. 2d, 1967). That case involved a following Congress interpreting a statute; in the instant case there has been a lapse of 28 years between the enactment of the statute and the alleged interpretation by Congress.

years prior to the enactment of the amendment where those corporations have not filed for recognition of their exempt status prior to the date of the amendment. The amendment does not apply to the petitioner since it applied for recognition of its exempt status prior to the effective date of the Act.

It is noted that in the legislative history of the Housing and Urban Development Act of 1968, (P.L. 90-448, 82 Stat. 477), the committee states that it expects local communities and states to exercise restraint in assessing properties financed under the housing acts by use of tax abatement or other tax reduction methods which would recognize the important purpose of the housing programs. These comments by the congressional committee directly concerned with the passage of the act supports the argument that in housing programs, such as the petitioner, Congress did in fact hope that the local communities would contribute some support by granting some form of tax relief. It would seem unlikely that Congress in directing its remarks to "states and their local governments" would not also have had in mind the District of Columbia.

To summarize, the Court concludes that the status of the petitioner has not been affected by the passage of the District of Columbia Revenue Act of 1970. Since that is the case, the Court finds that the District's motions to dismiss must be denied. Furthermore, the Court

concludes as a matter of law that the petitioner is a public charity as that term is used in D. C. Code 1967, §47-801a(h), and that the subject property is exempt from real estate taxes under D. C. Code 1967, §§47-801a(h) and (r). Accordingly, the Court holds that the taxes and penalties were improperly assessed against the petitioner for the taxable years 1970 and 1971.

Dated: June 9, 1972.



JOHN GARRETT PENN  
Judge

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